

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

**Darrell M. Stewart,**

**Plaintiff**

**v.**

**Indevus Pharmaceuticals, Inc., F/K/A  
Interneuron Pharmaceuticals, Inc.;  
Wyeth, Inc., F/K/A American Home  
Products Corporation;  
Wyeth Pharmaceuticals, Inc F/K/A  
Wyeth-Ayerst Pharmaceuticals,  
Inc., A Division Of American Home Products  
Corporation; and Boehringer Ingelheim  
Pharmaceuticals, Inc.,**

**Defendants**

**C.A. No. 04cv11228-GAO**

**PLAINTIFF'S MOTION TO REMAND**

Pursuant to 28 U.S.C. § 1447(c), plaintiff hereby seeks to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County, where this action was originally filed. In support of this motion, plaintiff states that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Pharmaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as "Wyeth"), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc., f/k/a Interneuron Pharmaceuticals, Inc. ("Indevus"), is a resident of Massachusetts and has not been fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the allegations in the complaint and supporting affidavits show that plaintiff has far more

than colorable claims against Indevus.

In support of this motion, plaintiff relies upon his consolidated memorandum filed in *Amadeo, et al v. Indevus, et al*, No. 04cv11039, and supporting documents. An individual affidavit will be supplied if deemed necessary.

In the event that this motion is granted, plaintiff requests that this Court issue an order requiring that the removing defendants pay plaintiff's just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

The Plaintiff  
By his attorneys,

/s/ Michael S. Appel  
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Dated: July 7, 2004